

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. GERALD FINKEL, as Chairman of the Joint
Industry Board of the Electrical Industry,

Plaintiff,

-against-

FERVENT ELECTRICAL CORP.,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

D/F

ORDER

13-CV-3289 (NGG) (RER)

Plaintiff Dr. Gerald Finkel, in his fiduciary capacity as Chairman of the Joint Industry Board of the Electrical Industry, brought this action against Defendant Fervent Electrical Corp. on June 10, 2013. (Compl. (Dkt. 1).) Plaintiff alleges that Defendant failed to make certain required contributions to various employee benefit plans, in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, et seq., and in breach of a collective bargaining agreement, pursuant to the Labor Management Relations Act, 29 U.S.C. § 185. (Id.) Although Defendant answered the Complaint on August 5, 2013 (Answer (Dkt. 10)), Defendant's counsel subsequently filed a motion to withdraw, which Magistrate Judge Ramon E. Reyes, Jr. granted. (Apr. 9, 2014, Order.) Judge Reyes also ordered Defendant to obtain substitute counsel by May 2, 2014 (id.), but as of the date of this Memorandum and Order, no such counsel has filed a notice of appearance in this case.

On June 20, 2014, Plaintiff moved for summary judgment against Defendant. (Pl.'s Mot. for Summ. J. (Dkt. 20).) On July 2, 2014, the court referred the motion to Judge Reyes for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Order, Dkt. 26.) On February 23, 2015, Judge Reyes issued an R&R

(Dkt. 27), recommending that Plaintiff's motion be granted and that Plaintiff be awarded: (1) \$418,349.96 in unpaid Required Contributions, as that term is defined in the R&R (see R&R at 2); (2) total interest on the unpaid and late-paid Required Contributions in the amount of \$26,858.35 through February 23, 2015, plus \$40.01 per day thereafter to the date of judgment; and (3) liquidated damages in the amount of \$83,699.99. (Id. at 5-7.)

No party has objected to Judge Reyes's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 7 ("Any objections to the recommendations made in this Report must be filed with the Clerk of the Court and the Honorable Nicholas G. Garaufis within fourteen days of receipt hereof. Failure to file timely objections waives the right to appeal the District Court's Order.")) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1).

With the exception of Judge Reyes's calculation of liquidated damages, the court finds no clear error, and therefore adopts the R&R in part. See id. (providing that district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge"). The court modifies, however, the amount of liquidated damages to be awarded to Plaintiff. Id. While Plaintiff is entitled to liquidated damages of twenty percent on the unpaid Required Contributions (see R&R at 6), this amounts to \$83,669.99, not \$83,699.99—the amount Judge Reyes awarded. (See, e.g., Decl. of Parisi Filippatos, Ex. U (Dkt. 22-21).)

Accordingly, the court ADOPTS IN PART and MODIFIES IN PART the R&R and GRANTS Plaintiff's motion for summary judgment. The court AWARDS Plaintiff: (1) unpaid

Required Contributions in the amount of \$418,349.96; (2) interest on the unpaid and late-paid

Required Contributions in the amount of \$26,858.35 through February 23, 2015, plus \$40.01 per day thereafter to the date of judgment; and (3) liquidated damages in the amount of \$83,669.99.

The Clerk of Court is respectfully DIRECTED to enter judgment and close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 13, 2015

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge